

IN THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS FORMAL CHARGES

November 9, 2006

RE: INQUIRY CONCERNING A
JUDGE, NO. 05-437

RE: CLIFFORD BARNES

CASE NUMBER: SC06-2119

COMES NOW, the respondent judge, pro se', and hereby moves this Commission to Dismiss the Notice, or in the alternative, several of the formal charges in this case. As grounds, the undersigned states:

1. Several of the charges are new and have never been properly noticed to the respondent or handled by the Commission pursuant to the rules of the JQC, to wit: Charges #2, 3, 5 in their entirety and those parts of 4 wherein respondent is accused of "unfounded public attacks", "failure to wear appropriate attire", and "refusal to attend judicial meetings". Florida Judicial Qualifications Commission Rule 6(b) requires that "...before the Investigative Panel determines that there is probable cause to initiate formal charges, the judge shall be notified of the investigation, the general nature of the subject matter of the investigation, and shall be afforded reasonable opportunity to make a statement". The subject in Charges 2, 3, and 5 (the Petition for Writ of Mandamus) came up in a conversation during the last Investigative Hearing, but respondent was not previously or subsequently notified that the subject was part of an investigation. The

“unfounded public attacks”, “failure to wear appropriate attire” and “refusal to attend judicial meetings” were never in any way noticed or handled according to the Rule. All of these charges, and this Notice, should be dismissed until after the Rule has been complied with.

2. Two of the charges in this Notice were part of the original and amended investigation begun on June 14th, 2005, which was dismissed without a finding of probable cause on November 9, 2005, to wit: Charge 4 “contempt for the judicial education process” and “inappropriate colloquies on the bench with defendants”. The Commission should be estopped from re-alleging that actions are unethical where it has already found no probable cause of ethical violations based on those same actions. Rule 6(d) requires that “...the judge shall be promptly notified in writing if the investigation does not disclose probable cause to warrant further proceedings”. It is patently unfair and in conflict with this rule to investigate, hold a hearing, clear the respondent, and then resurrect charges almost a full year after the finding of no probable cause.

WHEREFORE, the respondent respectfully requests the Hearing Panel Chair to dismiss this Notice, or in the alternative, the specific charges referenced above.

Respectfully submitted,

Clifford H. Barnes
St. Lucie County Judge
218 S. 2nd Street, Room 226
Fort Pierce, FL 34950
(772) 462-1474 (Telephone)

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss Formal Charges has been furnished via certified mail to Special Counsel Marvin E. Barkin, the Judicial Qualifications Office, John R. Beranek, Esq., and Special Counsel William P. Cassidy, Jr., this _____ day of November, 2006.

Clifford H. Barnes
St. Lucie County Judge